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John Hearne

December 8, 1993

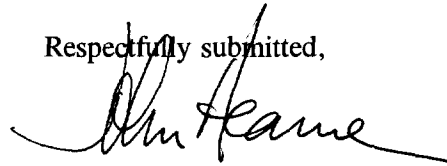
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

William F. Caton, Acting Secretary
Federal Communications Commission
Washington, D.C. 20054

Dear Mr. Caton,

Yesterday, Point Communications Company filed a faxed version of its Petition for Reconsideration in Gen Docket No. 90-314, together with the required number of copies. Accompanying this letter is the "hard copy" original of the Petition and a second set of the required number of copies, so that the Commission may have the quality of the original for its files in place of the fax version.

Respectfully submitted,



John Hearne

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DEC - 9 1993

Before the
Federal Communications Commission
Washington D.C.

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

**Amendment of the Commission's
Rules to Establish New Personal
Communications Services**

GEN Docket No. 90-314

To: The Commission

Petition for Reconsideration

Point Communications Company ("Point") hereby requests the Commission to reconsider its rules adopted in the Second Report and Order released on October 22, 1993 ("Order") in this proceeding. This Petition reflects the viewpoint of an experienced small communications business which intends to expand into new service areas through PCS facilities.¹

Spectrum Allocation

The Order would create a PCS industry which is sharply split between "Haves" and "Have Nots", wasting half the spectrum in the process. The allocation of two huge 30 MHz blocks on an MTA basis would confer enormous market power on two huge publicly held companies across vast regions. The remainder of the spectrum, split up between one highly occupied 20 MHz block in the lower band and four 10 MHz blocks in the much less

¹ Point is the licensee of Cellular System KNKN 231 in the Oregon-4 Rural Service Area. Point's system was among the first, if not the first, of the independently operated nonwireline cellular systems to go on the air in a rural service area. Point has successfully operated its system on a standalone basis for over three years.

desirable higher band,² are relative crumbs left for small business and the cellular industry in smaller service areas. This scheme has no basis in science or the marketplace. It is irrational and anticompetitive.

The record and prevailing science on the subject are clear that a 20 MHz block is more than enough to create a viable PCS service. With digital technology, a 20 MHz block is sufficient to serve every man, woman and child in all but the very largest markets in the nation.³ In a marketplace comprised of two cellular carriers, one ESMR carrier, and from two to six viable PCS carriers (depending on the spectrum allocation ultimately adopted), no single carrier could rationally expect to achieve more than a 30 percent market share. A 20 MHz block is more than sufficient to serve at least 30 percent of the total population in even the largest market in the nation. Allocating more than 20 MHz to any single PCS licensee would be a hideous waste of spectrum.

The cure for this is quite simple. There should be no artificial distinctions among the various spectrum blocks. Four 20 MHz blocks can be allocated in the lower band, and two 20 MHz blocks can be allocated in the upper band. All allocations should be on the same geographical basis, preferably in BTA or MSA/RSA increments. Let the giant companies aggregate the licenses into any configuration they desire up to 45 MHz -- be it an MTA, a

² The band above 2.0 GHz is subject to greater propagation losses from terrain, buildings and foliage. Also, subscriber equipment will be more expensive, bulkier, and have less battery life in this band. The Gallium-arsenide substrate necessary for energy efficient compact microprocessors cannot be used in this high of a frequency band.

³ 30 MHz allocations are not needed to avoid the anticipated cost of moving incumbent point-to-point microwave licensees. The cost involved will be a tiny fraction, on the order of one percent or less, of the total PCS infrastructure cost for a PCS licensee. The cost will be relatively inconsequential to any serious PCS provider, and will pale in comparison to other operating costs, such as marketing. The cost argument is merely a red herring designed by the "Big PCS" lobby to limit the extent of competition in PCS services.

partial MTA, or combination of MTA's -- by paying for multiple areas on the same frequency block in the auctions. The 45 MHz limit should apply to all mobile spectrum in operation, including cellular, ESMR, SMR and PCS.⁴

The Commission should not try to guess in advance how the PCS industry should look. While it is laudable to accommodate the various visions of PCS which have been presented to the Commission, the visions should be those of the service providers as they evolve in public service, not a mere guess in advance by the Commission. Let the companies involved configure their service area and spectrum by paying for the appropriate building blocks. The huge companies should not be granted all of the desirable spectrum, leaving less competitive facilities to small businesses and minorities.

Market Size and Boundaries

It is a mistake for the Commission to set communications service boundaries based on Rand-McNally trading area boundaries. The Rand-McNally boundaries, particularly for MTA's, bear no relationship to the communications needs of the public.

Even a cursory look at the Rand-McNally map shows that the MTA's in the east of the nation are far smaller geographically than those in the west. The Los Angeles MTA, for instance, covers all of Southern California and Southern Nevada, encompassing a population exceeding 19,600,000. This behemoth stretches across the "off limits to the public" Marine Base at Camp Pendleton to include San Diego, and extends across a hundred miles of

⁴ ESMR operators should be subject to the same spectrum cap and eligibility limitations that apply to cellular operators. Throughout the nation, ESMR operators, with their digital format, will have as much capacity to provide service as cellular operators, who must continue to devote a large portion of their spectrum to analog service. The ESMR operators will also have larger regional footprints than the cellular operators. It makes no sense to exempt ESMR operators from the restrictions which apply to cellular.

unpopulated desert to include Las Vegas. Had San Diego and Las Vegas been in the east, they would have had their own MTA's. It does not make sense to require, by national mandate, that the same company serve Los Angeles, San Diego and Las Vegas.

Again, the cure is simple. PCS licenses should be awarded based on a smaller market size unit, such as a BTA or an MSA/RSA. Let the large providers assemble large regional areas, if they want, by paying for the same spectrum block in multiple areas in the auctions. If larger regions are to be the unit size for any licenses, they must be modified in the west to adapt them to mobile service needs.⁵

The use of boundaries set by Rand-McNally, a private company, should also be abandoned. Rand-McNally is asserting proprietary rights to its maps and information, is charging premium prices in view of the surge in demand arising from this proceeding (which is hard for a small business to justify for a simple map and population data), and is restraining communications consultants and data providers from supplying key information about MTA's and BTA's which would be useful in the upcoming auctions. It is currently impossible for our company to obtain reliable data on MTA's and BTA's from our traditional suppliers of demographic information due to Rand-McNally's litigiousness.

To get rid of this mess over proprietary rights, the Commission has a well understood, time-tested alternative -- the MSA/RSA boundaries employed for cellular. These

⁵ If any licenses are to be awarded on an MTA basis, a number of the MTA's in the west should be subdivided into "Modified" MTA's, to bring them more in balance with the size of the MTA's in the east, and to base them closer to the actual PCS service needs of the public. This is precisely what was done by the Commission with the MSA and RSA boundaries in the cellular service, when the Commission realized that MSA and country boundaries did not necessarily reflect the cellular service needs of the public. Compare, for example, the "Modified MSA's" adopted for cellular for New York City and Los Angeles. The same type of reasoned modifications should be done for the MTA boundaries where they are clearly excessive, if any MTA's are to be employed for licensing.

are well known and are specifically adapted to mobile communications needs. The number of license areas is not significantly different than the number of BTA's. They would be far easier and quicker for the industry to deal with now than the Rand-McNally data.

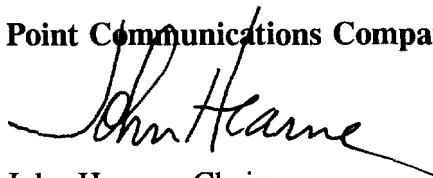
Opportunities for Small Businesses, Women and Minorities

Modifying the spectrum and market size requirements, as described above, will go a long way toward creating a legitimate opportunity in PCS for small businesses, women and minorities. If the current scheme in the Order is permitted to proceed, the opportunity will be illusory. A small business or traditionally disadvantaged person would not have any realistic chance in the market against two cellular carriers, one ESMR carrier, and two "Big PCS" carriers, all of them likely to be publicly held giants.

At least two blocks of spectrum should be reserved for small businesses and traditionally disadvantaged persons, as was done in the Order, with one exception -- the blocks should be on an even footing with those available to the giants of the industry. No artificial distinctions or disadvantages should be built into these blocks as was done in the Order. Equal Opportunity and the public interest deserve no less.

Respectfully submitted,

Point Communications Company

A handwritten signature in black ink, appearing to read "John Hearne", written over the company name.

John Hearne, Chairman

Dated: December 8, 1993

John Hearne
100 Wilshire Boulevard, Suite 1000
Santa Monica, California 90401
(310) 451-4430

Certificate of Service

I hereby certify that on December 8, 1993, a copy of the foregoing Petition for Reconsideration was sent by first class mail to each of the parties of record in this proceeding.

A handwritten signature in cursive script, appearing to read "John Hearne", is written over a horizontal line.

John Hearne